IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.435 OF 2005

Mallappa Dada Mokashi ...Petitoner
Vs.
Bhupal Mallappa Mokashi & Anr. ...Respondents

Shri. P.D. Dalvi for the Petitioner.
Shri. N.J. Patil for the Respondent No.1.
Ms M. H. Deshmukh, A.P.P. for the Respondent No.2.

CORAM : A. S. OKA, J.
DATED : JULY 20, 2005.

P.C.:

1. Heard Counsel appearing for the parties.

Petitioner's father filed an Appliation under Section 125 of the Code of Criminal Procedure, 1973 against the Respondent No.1-son praying for monthly allowance. The learned Magistrate allowed the said application. In Revision Application filed by the Respondent No.1 the learned Additional Sessions Judge has interferred and has dismissed the Application filed by the Petitioner.

2. Shri. Dalvi appearing for the Petitioner submitted that there is nothing on record to show that Petitioner has any source of income. He submitted that considering the fact that the Petitioner has no source of income and his present age is more than seventy years, the Respondent No.1 is under obligation to provide monthly maintenance. He submitted that learned Additional Sessions Judge ought not to have interfered with the order passed under section 125 of the said Code in favour of the Petitioner. Shri. Patil, appearing for the Respondent No.1 has supported

the impugned judgment and order.

3. I have considered the submissions. The learned Additional Sessions Judge has recorded a finding that by sale of immovable property of family, the Petitoner received a sum of Rs.75,000/- in August, 1991 and the further some of Rs.1,47,000/- in April, 1999. The learned Additional Sessions Judge held that though the case of the Petitioner was that the sale proceeds of the property have been taken by the Respondent No.1, no evidence to that effect was adduced. Perusal of the cross-examination of the Petitioner shows that he admitted that he disposed of most of the land and house before the suit filed by the Respondent No. 1 for partition was decreed. The Petitioner has not at all made out a case either in the examination-in-chief or in the cross-examination that the sale proceeds were taken by the Respondent NO.1. If this is the material on record, the learned Additional Sessions Judge was right in holding that this is not a case where Petitioner has no source of income and he was incapable of maintaining himself.

4. Taking overall view of the matter, no interference is called for. Writ Petition is dismissed. No orders as to costs.

JUDGE